

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

MARCH 22, 2011

Minutes of the meeting of the Workers' Compensation Industrial Council held on Tuesday, March 22, 2011, at 3:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
Bill Chambers
James Dissen
Dan Marshall
Senator Brooks McCabe

1. Call to Order

Chairman Bill Dean called the meeting to order at 3:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the previous meeting were sent out. Did everybody have a chance to look them over?

James Dissen made the motion to approve the minutes from the December 1, 2010, meeting. The motion was seconded by Dan Marshall and passed unanimously.

3. Office of Judges Report – Alan Drescher, Deputy Chief Administrative Law Judge

Judge Alan Drescher: Good afternoon. Judge Roush asked me to extend her apologies for not being able to attend this afternoon. She had a rescheduling of a meeting.

I wanted to go over a few highlights on the report that was provided to the Council members. The number of protests for the month of February was 374, fairly low number. That trend of declining protests continues, and you can see on the second

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page we are only projecting somewhat less than 5,000 protests for this calendar year. It's not a steep drop from the prior year, but the way things are going right now we don't see any reason why that trend would change. There weren't any significant changes to the workers' compensation law in this past Session that I'm aware of, so I don't think there is going to be a lot of new statutory provisions that are going to have to be litigated.

Our pending caseload continues to drop correspondingly. At the end of February we had 3,552 claims pending in our office. The good news is it does help in terms of the timeliness of the issuance of our decisions. It's one of the things that this Council talked to Judge Roush about several months ago. And we have worked with our Judges to try to increase our issuance of our decisions on a timely basis. For the month of February almost 92% were done within 60 days, so that is an increase in the timeliness. We're pleased with that and we're going to keep working on it. I would note for the year that we've got 99% of our decisions out within 90 days. We would like to get that to 100% and I don't know if that is going to happen, but that's our goal.

Other than the statistical analysis, the only other item I wanted to mention – we were able to move our office in Beckley. Thanks to the help of the Insurance Commissioner's staff, we've got a new office at 109 East Main Street, Beckley. For those of you that are familiar, it's next to the YMCA. There is some parking across the street, which I think will be beneficial to everybody. We have a much better location [room] to hold our hearings in. I'll be happy to address any questions that any of the Council members may have.

Chairman Dean: Mr. Marshall, do you have any questions?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: Yes, a couple. If I look at page four. . .when you said a decision within the [rule's] time limits, and I assume you mean you refer to that as being 60 days?

Judge Drescher: The rule is 90 days. The Council has encouraged us to cut that to 60 days, and that's what we've been trying to do.

Mr. Hartsog: Where are you at with regard to hitting 60 days?

Judge Drescher: For the month of February, we were at approximately 92%. For the year we're at a little under 93%.

Mr. Hartsog: What percentage would you say you would be at in 45 days?

Judge Drescher: We don't track that, so I can't tell you. . .sorry. It is 30 or 60 or 90. That's what we track.

Mr. Hartsog: Would you please see if there is some way – if you wouldn't mind – to kind of laying that out with regard to like 30, 45, 60, 75, 90 and over 90 so that you can kind of see as they shift? I don't know if you can go backwards and do that. As you all have said, it's pretty important to getting decisions so that claimants can move on and get treatment, etc.

Judge Drescher: I don't know that we'll be able to go back and calculate that for the past, but we may be able to do it in the future.

Mr. Hartsog: If you can, if you would please. . .

Judge Drescher: Okay.

Chairman Dean: Any other questions, Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Dissen, do you have any questions?

James Dissen: No, sir.

Chairman Dean: Mr. Chambers?

Bill Chambers: No, sir.

4. General Public Comments

Chairman Dean: We'll move onto the general public comments. Does anybody from the general public have a comment today? [There were no public comments.]

5. Old Business

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under old business? Mr. Marshall?

Mr. Marshall: Not at this time, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Chambers?

Mr. Chambers: No, sir.

Chairman Dean: Commissioner Cline, do you have anything you would like to bring up today?

Commissioner Jane Cline: No. I think Mary Jane [Pickens] is going to briefly outline the Session.

6. New Business

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under new business? Mr. Marshall?

Mr. Marshall: No.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Chambers?

Mr. Chambers: No, sir.

Chairman Dean: Mary Jane, we'll go right to you.

Mary Jane Pickens (General Counsel, OIC): After every Session usually we come in here with a big presentation of all the things that happened to workers' comp. There were a number of Bills that were carryovers from last year and prior years, the usual things. But those Bills didn't move. The only Bill that – it's sort of workers' comp – the only Bill that we had that related to workers' comp was actually a Bill [H. B. 3163] to designate the Insurance Commissioner as the entity to assist state agencies with procuring their comp coverage because the Legislature has said that as of July 1 of this year that BrickStreet no longer has to be the insurer of last resort for state agencies. So the feeling was that these are a bunch of agencies that have not shopped for comp coverage before and they're probably going to need some help. There are a lot of efficiencies and some money savings we thought to be had from beefing up risk management for state agencies and that type of thing. This Bill passed and now the Insurance Commissioner's office and staff are putting together a program and making sure that we've got the right consultants and that type of thing to really work with the state agencies to get the program going, and there's a close timeline on that. But that's it for workers' comp. That was the only Bill with regard to workers' comp this year. So that's really all I have to report.

Chairman Dean: Any questions, Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Chambers?

Mr. Chambers: No, sir.

Chairman Dean: Bill Kenny, do you have anything that you would like to add?

Bill Kenny (Deputy Commissioner, OIC): No.

7. Next Meeting

Chairman Dean: The next item on the agenda is the next meeting which is Thursday, April 28, 2011 at 1:00 p.m. I would like to see if we could change that to the 26th if at all possible. I'll be out of town on the 27th and 28th.

Mr. Marshall: It works for me.

Chairman Dean: Mr. Hartsog, is the 26th a problem for you?

Mr. Hartsog: I doubt it, but I need to go back and check my calendar.

Chairman Dean: Mr. Dissen, does the 26th work for you?

Mr. Dissen: Yes. I have two other Board meetings on either side, but if it's a 1:00 p.m. meeting it would be fine.

Chairman Dean: Mr. Chambers?

Mr. Chambers: Yes, it works for me. Could you clarify for us what the timing is for when the agenda [for each next meeting] is developed? What the process is to have input into that agenda, and if there is a deadline for a member of this Council to request something to be put on the agenda, and when that deadline would be.

Ms. Pickens: Yes. There is a deadline because it is in compliance with the State's Open Meeting Laws, and we need to get it published in the *State Register*. If we are having our meetings on Thursday. . .now the 26th is a Tuesday, right?

Chairman Dean: Yes, the 26th is a Tuesday.

Ms. Pickens: How about if we send an e-mail out to you all to clarify that.

Mr. Chambers: That would be great.

Ms. Pickens: If our meeting is on a Thursday we have to get it into the Secretary of State's Office for publication and register by the prior Wednesday – as in Wednesday, more than a week before. It's a technical thing and you've got to count those days. After this meeting, we'll get together and send all of you an e-mail so that you know exactly when that time is going to be.

Mr. Hartsog: So it would be safe to say 10 calendar days prior to the scheduled meeting.

Ms. Pickens: Sure.

Mr. Hartsog: And I think, if I'm not mistaken, those should go to the Chairman.

Chairman Dean: They can come to me and I'll forward them to you or. . .

Ms. Pickens: Either way. That would work.

Chairman Dean: Forward to me and I'll forward them on. That's not a problem. We're going to say 10 days before the meeting, and I'll forward them the same day.

Ms. Pickens: I'll send an e-mail out so everybody has an official response so that you understand what the timing is for getting it into the *State Register*.

Mr. Marshall: If you would, also in your memo maybe put in a statement that as far as booking an agenda item notify both the Chair and your office, or copy your office. That way – at least in my case – I'll have a record of that. . .if I submit something.

Ms. Pickens: Okay.

Chairman Dean: Is that okay with you, Mr. Chambers?

Mr. Chambers: Yes, that sounds great. But I also wanted to inquire, maybe just confirm. . .It is my impression, having not studied the Open Meeting Laws closely, that if

any three of the five of us would happen to find ourselves in the same place, we need to avoid discussing Council matters because we would violate an Open Meeting. Is that an overstatement?

Chairman Dean: No, I don't think so.

Ms. Pickens: No. I think that's safe, sure.

Mr. Chambers: But if some of us want to get together and talk informally betwixt, I guess I just want to have a little bit better feel for what we can do in that regard without violating any rules or law.

Ms. Pickens: That is something – and I wouldn't want to misspeak here without looking at it – we can certainly look at that and work with you all to make sure you know what you can do and what you can't. You don't want to get on the wrong side of the Open Meeting Law.

Mr. Chambers: Absolutely. And in that regard, going just a little bit further, something that I've gotten used to doing with many of the businesses I advise and other boards I'm on is occasionally having just a brainstorming session. And often that is not conducive to an Open Meeting, but Open Meeting Laws control. So I'd be curious as to what our options are – and perhaps there are no options – but to brainstorm in an Open Meeting.

Mr. Marshall: Mr. Chairman. . .

Chairman Dean: Yes.

Mr. Marshall: Elaborate on that just a little bit. I think it would be helpful to me, and possibly my fellow members, if you could give us a short briefing on that subject at the next meeting encompassing all of Mr. Chambers' comments.

Ms. Pickens: Sure.

Chairman Dean: Anything else you would like to bring up, Mr. Chambers?

Mr. Chambers: Not at this time.

Chairman Dean: Very good. Back to the next meeting. It will be Tuesday, April 26, 2011, at 1:00 p.m., here at the Offices of the Insurance Commissioner.

8. Executive Session

Chairman Dean: The next order of business is Executive Session, related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Marshall: So made, Mr. Chairman.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded to go into Executive Session. Any questions on the motion? All in favor signify by saying "aye." Opposed, "nay." The aye's have it. We will now go into Executive Session.

[The Executive Session began at 3:17 p.m. and ended at 3:23 p.m.]

Chairman Dean: We will call the Industrial Council meeting to order. We have a Resolution on the floor here to grant self-insured status to CONSOL Pennsylvania Coal Company, LLC. Is there a motion by the Industrial Council?

Mr. Dissen: So moved.

Mr. Chambers: Second.

Chairman Dean: A motion has been made and seconded to grant self-insured status to CONSOL Pennsylvania Coal Company, LLC. Any questions on the motion?

Mr. Hartsog: I assume the motion assumes that there is a parental guaranty in place at the time.

Chairman Dean: We will add that to the motion. Is that okay with you, Mr. Dissen?

Mr. Dissen: Yes, sir.

Chairman Dean: Is that okay with you, Mr. Chambers?

Mr. Chambers: Yes.

Chairman Dean: Very good. All in favor say "aye." All opposed "nay." The aye's have it. [Motion passed.] Is there a motion to adjourn?

9. Adjourn

Mr. Dissen made the motion to adjourn. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 3:25 p.m.